SEARCH AND SEIZURE – "Open fields" doctrine – Revised 11/2009

The Fourth Amendment guaranty against unreasonable searches and seizures does not protect "open fields." *Oliver v. United States*, 466 U.S. 170 (1984); *Hester v. United States*, 265 U.S. 57 (1924). Thus, officers may enter and search an open field without a warrant. *Id.* Even though the government's intrusion in an open field may be a trespass at common law, this does not make it a "search" for purposes of the Fourth Amendment. *Oliver*, 466 U.S. at. 183.

Open fields may include any unoccupied or undeveloped area outside the curtilage of the home. *United States v. Dunn*, 480 U.S. 294 (1987). The Supreme Court has described "curtilage" as an area "so intimately tied with the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection." *Id.* at 301. In deciding whether a particular area is curtilage, courts should look at four factors: "[1] the proximity of the area claimed to be curtilage to the home, [2] whether the area is included within an enclosure surrounding the home, [3] the nature of the uses to which the area is put, and [4] the steps taken by the resident to protect the area from observation by people passing by." *Id.* at 301. Garages, driveways, and parking areas used in connection with a dwelling are generally treated as curtilage. *In re One 1970 Ford Van*, 111 Ariz. 522, 523, 533 P.2d 1157, 1158 (1975). An open field may be neither "open" nor a "field" as those terms are used in common speech. *Oliver*, 466 U.S. 170. The erection of fences or "No Trespassing" signs on an open field does not create a constitutionally protected privacy interest. *Dunn*, 480 U.S. at 304.

Police officers may observe evidence when they are standing in an open field without implicating the Fourth Amendment, even if that evidence observed lies within an

area that does receive Fourth Amendment protection. *Id.; see also Air Pollution Variance Board of Colorado v. Western Alfalfa Corp.*, 416 U.S. 861, 865 (1974) (sights seen in open fields are not searches). In *Dunn*, police officers climbed over fences on an open field to reach a barn. Standing in the open field, the officers could view a drug lab inside the barn. Even if the barn were part of the curtilage, the officers' observations did not constitute a "search" because they were made while the officers were outside the curtilage of the house in the open field. 480 U.S. at 304.

Arizona recognizes the "open fields" doctrine. *See State v. Caldwell*, 20 Ariz.App. 331, 335, 512 P.2d 863, 867 (1973); *State v. Platt*, 130 Ariz. 570, 573, 637 P.2d 1073, 1076 (App. 1981). In *Caldwell*, the Court of Appeals cited the Supreme Court's "open fields" doctrine and found that a marijuana brick press right next to the home was within the curtilage, but boxes containing contraband in the desert 100 yards from the home were in the open fields. 20 Ariz.App. at 335, 512 P.2d at 867. The court found it significant that the boxes were discovered by a neighbor boy, demonstrating that the boxes were placed in an area where the public is apt to wander. *Id.*; *see also State v. Platt*, 130 Ariz. 570, 573, 637 P.2d 1073, 1076 (App. 1981) (finding that if an individual's backyard is open to physical access and viewing from a neighbor's yard, there is no reasonable expectation of privacy).